

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 890 OF 2014**

Dilipkumar Madanlal Chhabria	...Appellant
<i>Versus</i>	
Pratham Realtors & Anr	...Respondents

Mr RD Mishra, for the Appellant.
Mr Madhur S Surana, for the Respondent No. 1.
Mr Girish Utangale, i/b M/s Utangale & Co, for Respondent No. 2.

CORAM: G.S. PATEL, J
DATED: 3rd July 2017

PC:-

1. The challenge is on the basis that the Plaintiff is the owner of the property at Survey No. 211 of Village Bhandup, Taluka Kurla with its structure standing thereon. This claim is based on two documents both styled as Agreements of Sale, both on Stamp Paper of Rs. 5/- and both are unregistered though compulsorily registrable. The Plaintiff cannot establish title.

2. In any case, the dispute was whether the Suit property was declared was a slum or not. In this Appeal, the Court called for a report from the Slum Rehabilitation Authority. That Affidavit is on record from pages 54 to 57. It shows that the submitted slum scheme on CTS No. 359 (part) extends to the suit structure which is a set of

nine galas in the occupation and possession of the third parties. The Affidavit from the Slum Rehabilitation Authority clarifies that being a censused slum, no declaration under Section 3(c) of the Slum Act was necessary. In any case, as regards a submitted scheme, the list of eligible persons is a list of those who are occupants, not necessarily owners. In other words, slum schemes recognise occupancy. They do not confer or establish title. If a true owner wishes to evict an occupation his remedy lies elsewhere. The occupant's right to rehabilitation cannot be compromised.

3. It is also not open to an owner to seek a declaration in Civil Court that the scheme submitted does not extend to his structure. There is a statutory bar under Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971. An application for these reliefs is to be made to the Competent Authority or the Tribunal constituted under that Act. It is for this reason that the Civil Court returned the plaint under Order VII Rule 10 of the Code of Civil Procedure 1908.

4. It is not possible to find fault with the order under Appeal. There is no cause for interference. The appeal is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)